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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 1**

**[GC Docket No. 10-44; FCC 14-179]**

### **The Commission's rules of Practice and Procedure Relating to the Filing of Formal Complaints and Pole Attachment Complaints**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rules.

**SUMMARY:** This document amends procedural rules implemented by the Commission's 2011 determination that docketing and electronic filing be utilized in proceedings involving "[n]ewly filed formal common carrier complaints and newly filed pole attachment complaints before the Enforcement Bureau." The rule changes also apply to future filings made in existing Section 208 formal complaints and pole attachment complaints. In addition, the amendments make a few procedural changes to existing Section 208 formal complaint and pole attachment complaint filing rules to create uniformity among them and ease of administration for parties and staff when initiating service of pleadings or filing confidential matters with the Commission. The rules further establish a single electronic inbox within Electronic Comment Filing System (ECFS) to handle the initial filing of the above-identified new complaints. Accepted complaints will receive a distinct ECFS docket number; rejected complaints will remain on ECFS but will be stored within the Inbox.

**DATES:** Effective [insert date 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Tracy Bridgham, Enforcement Bureau, Federal Communications Commission, [Tracy.Bridgham@fcc.gov](mailto:Tracy.Bridgham@fcc.gov), (202) 418-0967.

**SUPPLEMENTARY INFORMATION:** This document, adopted on November 5, 2014 and released on November 12, 2014, GC Docket No. 10-44, FCC 14-179, revises several sections of 47 CFR part 1. The rule changes will facilitate and enhance public participation in Commission section 208 formal complaint and section 224 pole attachment complaint proceedings, thereby making the Commission's decision-making process more efficient, modern, and transparent.

Regulatory Flexibility Act. The actions taken in this Order do not require notice and comment, and therefore fall outside the Regulatory Flexibility Act of 1980, 5 U.S.C. 601(2); 603(a), as amended. We nonetheless anticipate that the rules we adopt today will not have a significant economic impact on a substantial number of small entities. As described above, the rules relate to our internal procedures and do not impose new substantive responsibilities on regulated entities. There is no reason to believe that operation of the revised rules will impose significant costs on parties to Commission proceedings. To the contrary, we take today's actions with the expectation that, overall, they will make dealings with the Commission quicker, easier, and less costly for entities of all sizes.

Paperwork Reduction Act. Although the rule sections affected by this proceeding have information collections associated with them, the Office of Management and Budget has determined that, under the Paperwork Reduction Act of 1995, Pub. L. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. 3501 *et seq.*), these changes are not substantive in nature and will not result in any new or modified information collections.

ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i), 4(j), 208, and 224 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 208, 224, that the rules set forth ARE ADOPTED, effective 30 days after the date of publication in the Federal Register.

IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 208, and 224 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 208, 224, and § 1.3 of the Commission's rules, 47 CFR 1.3, that, effective upon release of this Order, §§ 1.720, 1.721, 1.727, 1.731, 1.732, 1.733, 1.734, 1.735, 1.1403, 1.1404, and 1.1408 of the Commission's rules, 47 CFR 1.720, 1.721, 1.727, 1.731, 1.732, 1.733, 1.734, 1.735, 1.1403, 1.1404, 1.1408, are WAIVED to the extent necessary to permit online electronic

filing in accordance with the processes discussed in this Order. This waiver shall be effective ten days after release of this Order and until the effective date of the rule changes ordered in the previous paragraph.

**List of Subjects in 47 CFR part**

Administrative practice and procedure; Telecommunications

**FEDERAL COMMUNICATIONS COMMISSION.**

Marlene H. Dortch,

Secretary.

## **Final rules**

For the reasons discussed in this preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

### **PART 1 – PRACTICE AND PROCEDURE**

1. The authority citation for 47 CFR part 1 continues to read as follows:

**AUTHORITY:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, 1403, 1404, 1451, and 1452.

2. Section 1.720 is amended by revising paragraph (j) to read as follows:

#### **§ 1.720 General pleading requirements.**

\* \* \* \* \*

(j) Pleadings shall identify the name, address, telephone number, and email address for either the filing party's attorney or, where a party is not represented by an attorney, the filing party.

3. Section 1.721 is amended by revising paragraphs (a)(3) and (5) to read as follows:

#### **§ 1.721 Format and content of complaints.**

(a) \* \* \*

(3) The name, address, telephone number, and email address of complainant's attorney, if represented by counsel;

\* \* \* \* \*

(5) Assertions based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the complainant's belief and why the complainant could not reasonably ascertain the facts from the defendant or any other source;

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4. Section 1.727 is revised to read as follows:

**§ 1.727 Motions.**

(a) A request to the Commission for an order shall be by written motion, stating with particularity the grounds and authority therefor, and setting forth the relief or order sought.

(b) All dispositive motions shall contain proposed findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading. Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion. All facts relied upon in motions must be supported by documentation or affidavits pursuant to the requirements of §1.720(c), except for those facts of which official notice may be taken.

(c) Oppositions to motions may be filed and served within five business days after the motion is filed and served and not after. Oppositions shall be limited to the specific issues and allegations contained in such motion; when a motion is incorporated in an answer to a complaint, the opposition to such motion shall not address any issues presented in the answer that are not also specifically raised in the motion. Failure to oppose any motion may constitute grounds for granting of the motion.

(d) No reply may be filed to an opposition to a motion.

(e) Motions seeking an order that the allegations in the complaint be made more definite and certain are prohibited.

(f) Amendments or supplements to complaints to add new claims or requests for relief are prohibited. Parties are responsible, however, for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding as required under §1.720(g).

5. Section 1.731 is revised to read as follows:

**§ 1.731 Confidentiality of information produced or exchanged.**

(a) Any materials generated in the course of a formal complaint proceeding may be designated as proprietary by either party to the proceeding or a third party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(1) through (9). Any party asserting confidentiality for such materials must:

(1) Clearly mark each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the materials designated as proprietary fall under the standards for nondisclosure enunciated in the FOIA.

(2) File with the Commission, using the Commission's Electronic Comment Filing System, a public version of the materials that redacts any proprietary information and clearly marks each page of the redacted public version with a header stating "Public Version." The redacted document shall be machine-readable whenever technically possible. Where the document to be filed electronically contains metadata that is confidential or protected from disclosure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the document before filing it electronically.

(3) File with the Secretary's Office an unredacted hard copy version of the materials that contains the proprietary information and clearly marks each page of the unredacted confidential version with a header stating "Confidential Version." The unredacted version must be filed on the same day as the redacted version.

(4) Serve one hard copy of the filed unredacted materials and one hard copy of the filed redacted materials on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together

with a proof of such service in accordance with the requirements of §§ 1.47(g) and 1.735(f)(1) through (3);

(b) Except as provided in paragraph (c) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties;

(4) The Commission and its staff; and

(5) Court reporters and stenographers in accordance with the terms and conditions of this section.

(c) The Commission will entertain, subject to a proper showing under § 0.459 of this chapter, a party's request to further restrict individuals' access to proprietary information. Pursuant to § 0.459 of this chapter, the other parties will have an opportunity to respond to such requests. Requests and responses to requests may not be submitted by means of the Commission's Electronic Comment Filing System but instead must be filed under seal with the Office of the Secretary.

(d) The individuals identified above in paragraph (b)(1) through (3) shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information

shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(e) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (b)(1) through (3) and (c) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(f) Upon termination of the formal complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

6. Section 1.732 is amended by removing paragraph (e) and redesignating paragraphs (f) through (h) as (e) through (g) and revising them to read as follows:

**§ 1.732 Other Required Written Submissions**

\* \* \* \* \*

(e) Initial briefs shall be no longer than twenty-five pages. Reply briefs shall be no longer than ten pages. Either on its own motion or upon proper motion by a party, the Commission staff may establish other page limits for briefs.

(f) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including affidavits and exhibits.



(g) The parties shall submit a joint statement of stipulated facts, disputed facts, and key legal issues no later than two business days prior to the initial status conference, scheduled in accordance with the provisions of § 1.733(a).

7. Section 1.733 is amended by revising paragraphs (f)(1) and (2) to read as follows:

**§ 1.733 Status conference.**

\* \* \* \* \*

(f) \*\*\*

(1) Submit a joint proposed order memorializing the oral rulings made during the conference to the Commission by midnight, Eastern Time, on the business day following the date of the status conference, or as otherwise directed by Commission staff. In the event the parties in attendance cannot reach agreement as to the rulings that were made, the joint proposed order shall include the rulings on which the parties agree, and each party's alternative proposed rulings for those rulings on which they cannot agree. Commission staff will review and make revisions, if necessary, prior to signing and filing the submission as part of the record. The proposed order shall be filed using the Commission's Electronic Comment Filing System; or

(2) Pursuant to the requirements of paragraph (e) of this section, submit to the Commission by midnight, Eastern Time, on the third business day following the status conference or as otherwise directed by Commission staff either:

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8. Section 1.734 is amended by removing paragraph (d) and revising paragraph (c) to read as follows:

**§ 1.734 Specifications as to pleadings, briefs, and other documents; subscription.**

\* \* \* \* \*

(c) The original of all pleadings and other submissions filed by any party shall be signed by the party, or by the party's attorney. The signing party shall include in the document his or her address, telephone number, email address, and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required by rule or statute, pleadings need not be verified. The signature of an attorney or party, in accordance with the requirements of § 1.52, shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed solely for purposes of delay or for any other improper purpose.

9. Section 1.735 is revised to read as follows:

**§ 1.735 Fee remittance; electronic filing; copies; service; separate filings against multiple defendants.**

(a) Complaints may generally be brought against only one named carrier; such actions may not be brought against multiple defendants unless the defendant carriers are commonly owned or controlled, are alleged to have acted in concert, are alleged to be jointly liable to complainant, or the complaint concerns common questions of law or fact. Complaints may, however, be consolidated by the Commission for disposition.

(b) The complainant shall remit separately the correct fee either by check, wire transfer, or electronically, in accordance with part 1, subpart G (see § 1.1106 of this chapter) and, shall file an original copy of the complaint, using the Commission's Electronic Comment Filing System, and, on the same day:

(1) If the complaint is filed against a carrier concerning matters within the responsibility of the International Bureau (see § 0.261 of this chapter), serve, by email, a copy on the Chief, Policy Division, International Bureau; and

(2) If a complaint is addressed against multiple defendants, pay a separate fee, in accordance with part 1, subpart G (see § 1.1106), for each additional defendant.

(c) The complainant shall serve the complaint by hand delivery on either the named defendant or one of the named defendant's registered agents for service of process on the same date that the complaint is filed with the Commission in accordance with the requirements of paragraph (b) of this section.

(d) Upon receipt of the complaint by the Commission, the Commission shall promptly send, by email, to each defendant named in the complaint, notice of the filing of the complaint. The Commission shall send, by email, to each defendant named in the complaint, a copy of the complaint. The Commission shall additionally send, by email, to all parties, a schedule detailing the date the answer and any other applicable pleading will be due and the date, time, and location of the initial status conference.

(e) Parties shall provide hard copies of all submissions to staff in the Market Disputes Resolution Division of the Enforcement Bureau upon request.

(f) All subsequent pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents, or other written submissions, shall be filed using the Commission's Electronic Comment Filing System. In addition, all pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents, or other written submissions, shall be served by the filing party on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together with a proof of such service in accordance with the requirements of § 1.47(g). Service is deemed effective as follows:

(1) Service by hand delivery that is delivered to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day;

(2) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service; or

(3) Service by email that is fully transmitted to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by email that is fully transmitted to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day.

(g) Supplemental complaint proceedings. Supplemental complaints filed pursuant to § 1.722 shall conform to the requirements set forth in this section, except that the complainant need not submit a filing fee, and the complainant may effect service pursuant to subsection (e) and (f) of this section rather than paragraph (c) of this section.

10. Section 1.1403 is amended by revising paragraph (d) to read as follows:

**§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.**

\* \* \* \* \*

(d) A cable television system operator or telecommunications carrier may file a “Petition for Temporary Stay” of the action contained in a notice received pursuant to paragraph (c) of this section within 15 days of receipt of such notice. Such submission shall not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television service or telecommunication service, a copy of the notice, and certification of service as required by § 1.1404(b). The named respondent may file an answer within 7 days of the date the Petition for Temporary Stay was filed. No further filings under this section will be considered unless requested or authorized by the Commission and no extensions of time will be granted unless justified pursuant to § 1.46.

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11. Section 1.1404 is amended by revising paragraph (a) to read as follows:

**§ 1.1404 Complaint.**

(a) The complaint shall contain the name, address, telephone number, and email address of the complainant; name, address, telephone number, and email address of the respondent; and a verification (in accordance with the requirements of § 1.52), signed by the complainant or officer thereof if complainant is a corporation, showing complainant's direct interest in the matter complained of. Counsel for the complainant may sign the complaint. Complainants may join together to file a joint complaint. Complaints filed by associations shall specifically identify each utility, cable television system operator, or telecommunications carrier who is a party to the complaint and shall be accompanied by a document from each identified member certifying that the complaint is being filed on its behalf.

\* \* \* \* \*

12. Section 1.1408 is revised to read as follows:

**§ 1.1408 Fee remittance; electronic filing; service; number of copies; form of pleadings; and proprietary materials.**

(a) The complainant shall remit separately the correct fee either by check, wire transfer, or electronically, in accordance with part 1, subpart G (see § 1.1106) and, shall file an original copy of the complaint, using the Commission's Electronic Comment Filing System. The original of the response and reply, as well as all other written submissions, shall be filed with the Commission using the Commission's Electronic Comment Filing System. Service must be made in accordance with the requirements of § 1.735(b), (c), (e), and (f).

(b) All papers filed in the complaint proceeding must be drawn in conformity with the requirements of §§1.49, 1.50, and 1.52.

(c) Any materials generated in the course of a pole attachment complaint proceeding may be designated as proprietary by either party to the proceeding or a third party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(1) through (9). Any party asserting confidentiality for such materials must:

(1) Clearly mark each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the materials designated as proprietary fall under the standards for nondisclosure enunciated in the FOIA.

(2) File with the Commission, using the Commission's Electronic Comment Filing System, a public version of the materials that redacts any proprietary information and clearly marks each page of the redacted public version with a header stating "Public Version." The redacted document shall be machine-readable whenever technically possible. Where the document to be filed electronically contains metadata that is confidential or protected from disclosure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the document before filing it electronically.

(3) File with the Secretary's Office an unredacted hard copy version of the materials that contains the proprietary information and clearly marks each page of the unredacted confidential version with a header stating "Confidential Version." The unredacted version must be filed on the same day as the redacted version.

(4) Serve one hard copy of the filed unredacted materials and one hard copy of the filed redacted materials on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together

with a proof of such service in accordance with the requirements of §§ 1.47(g) and 1.735(f)(1) through (3) of this chapter;

(d) Except as provided in paragraph (e) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties;

(4) The Commission and its staff; and

(5) Court reporters and stenographers in accordance with the terms and conditions of this section.

(e) The Commission will entertain, subject to a proper showing under § 0.459 of this chapter, a party's request to further restrict access to proprietary information. Pursuant to § 0.459 of this chapter, the other parties will have an opportunity to respond to such requests. Requests and responses to requests may not be submitted by means of the Commission's Electronic Comment Filing System but instead must be filed under seal with the Office of the Secretary.

(f) The individuals identified in paragraphs (d)(1) through (3) of this section shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information

shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(g) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (d) and (e) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(h) Upon termination of the pole attachment complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

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